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WYNDHAM VACATION OWNERSHIP, INC.

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

TANYA SPURBECK,

Plaintiff,

vs.

WYNDHAM VACATION OWNERSHIP,  
INC.,

Defendant.

Case No. 2:20-cv-00346-JAD-NJK

**DEFENDANT'S MOTION TO STAY  
DISCOVERY AND VACATE THE EARLY  
NEUTRAL EVALUATION**

Defendant WYNDHAM VACATION OWNERSHIP, INC. ("Defendant" or "Wyndham") by and through its counsel, Littler Mendelson, P.C., hereby moves this Court for an order staying discovery and vacating the Early Neutral Evaluation ("ENE") session. Wyndham seeks the foregoing pursuant to the pending Motion to Dismiss Plaintiff TANYA SPURBECK's ("Plaintiff") Second Amended Complaint in its entirety with prejudice, (*see* ECF No. 9). The expense of participating in discovery and preparing for the ENE will likely be wasted given the strong chance that Plaintiff's case will be dismissed with prejudice pending the Court's ruling on the Motion to Dismiss because Plaintiff did not timely file her case within the ninety-day timeframe upon receiving her Notice of Right to Sue.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff's lawsuit is time-barred. Because of this, Defendant moves to stay discovery and  
4 vacate the ENE to alleviate the expenses that will be incurred from participating in both. *See* Fed.  
5 R. Civ. P. 1 ("[The Federal Rules of Civil Procedure] should be construed, administered, and  
6 employed by the court and the parties to secure the speedy . . . and inexpensive determination of  
7 every action."). Specifically, Plaintiff failed to file her suit within the statutory deadline of ninety  
8 days provided in her Notice of Right to Sue. Rather, Plaintiff filed her case more than a year after  
9 receiving her Notice, rendering the entire case time-barred. Because of this, there is a strong  
10 likelihood that the Court will dismiss Plaintiff's case with prejudice, and requiring Defendant to  
11 participate in either discovery or the ENE will prejudice Defendant. Wyndham therefore moves to  
12 stay discovery pending the decision on the Motion to Dismiss and to vacate the ENE.

13 **II. BACKGROUND**

14 Plaintiff began working for Wyndham on November 27, 2017, and she was terminated for  
15 her failure to perform to the Company's standards on June 13, 2018. Plaintiff filed her Charge of  
16 Discrimination (the "Charge") against Defendant on August 18, 2018. On February 7, 2019, the  
17 EEOC sent Plaintiff her Notice of Right to Sue (the "Notice") at her request, giving her ninety days  
18 to file suit. Notwithstanding the fact that she requested this Notice so she could proceed with filing  
19 her lawsuit, Plaintiff then filed a second Charge of Discrimination (the "Second Charge") on March  
20 21, 2019. Upon receiving the notice of the Second Charge, Wyndham contacted the EEOC on June  
21 17, 2019, and notified it that the Second Charge was a duplicate of the original Charge, and  
22 Wyndham had already responded to the original Charge. On June 19, 2019, the EEOC sent a letter  
23 to Plaintiff, notifying Plaintiff that it would be closing the Second Charge because "[t]his was a  
24 duplicate file to [the original Charge]." In spite of this correspondence, Plaintiff took no action on  
25 her allegations until filing the instant case on February 18, 2020—over a year after receiving her  
26 Notice of Right to Sue. Because Plaintiff's Right to Sue expired, and the right-to-sue deadline acts  
27 as a statute of limitations, her case should be dismissed with prejudice.  
28

### III. ARGUMENT

#### i. Because Plaintiff Failed to Timely File Her Lawsuit after Receiving her Notice of Right to Sue, Her Case Will Likely Be Dismissed, and An Order Staying Discovery and Vacating the ENE is Therefore Appropriate.

Courts have broad discretion to determine whether a stay of litigation, including a stay of discovery is appropriate. *Little v. City of Seattle*, 863 F.2d 681, 685 (9th Cir. 1988). When deciding whether to stay discovery while a dispositive motion is pending, courts consider: (1) whether the motion is “potentially dispositive of the entire case or at least dispositive of the issue on which discovery is sought,” and (2) “whether the pending potentially dispositive motion can be decided without additional discovery.” *Ministerio Roca Solida v. U.S. Dep’t of Fish & Wildlife*, 288 F.R.D. 500, 506 (D. Nev. 2013); *see also, e.g., Klaizner, v. Ditech Financial LLC*, 2016 WL 3176579 (D. Nev. June 2, 2016). In applying this two-pronged test, courts take a “preliminary peek” at the merits of the pending dispositive motion to assess whether a stay is warranted. *Tradebay, LLC, v. Ebay, Inc.*, 278 F.R.D. 597, 603 (D. Nev. 2011).

Both prongs of the *Ministerio* test are satisfied here. Not only is the pending Motion to Dismiss dispositive of the entire case, but also the Motion to Dismiss can be decided without additional discovery. The dismissal of Plaintiff’s case is grounded purely in a statute of limitations defense barring Plaintiff from bringing her suit outright. Moreover, the law is clear that a plaintiff must file her lawsuit within the ninety days provided by the Notice of Right to Sue, and a failure to do so results in the suit being time-barred. *See Payan v. Aramark Mgmt. Servs. Ltd. P’ship*, 495 F.3d 1119, 1121 (9th Cir. 2007) (“If a litigant does not file suit within ninety days ‘[of] the date EEOC dismisses a claim,’ then the action is time-barred.”) (emphasis added). Further, no additional discovery is necessary because all the information supporting Defendant’s argument is judicially noticeable. Because Plaintiff failed to timely file her lawsuit, Defendant moved to dismiss her suit entirely. Therefore, a preliminary peek at the Motion to Dismiss resolves any doubt as to whether Plaintiff’s case against Defendant will be dismissed.

Because of this, Defendant requests that discovery is stayed until the Motion to Dismiss is decided and that the ENE is vacated. Plaintiff’s claims are time-barred, and therefore, an ENE

1 would neither be productive nor effective. Accordingly, Defendant should not have to bear the  
2 burden of the time and cost for both discovery and the ENE pending the Court's decision on the  
3 Motion to Dismiss.

4 **IV. CONCLUSION**

5 For the foregoing reasons, Wyndham respectfully requests that the Court stay discovery  
6 pending the decision on the Motion to Dismiss, (ECF No. 9), and vacate the ENE.

7 Dated: March 23, 2020

8 Respectfully submitted,

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PATRICK H. HICKS, ESQ.  
KELSEY E. STEGALL, ESQ.  
LITTLER MENDELSON, P.C.

12  
13 Attorneys for Defendant  
WYNDHAM VACATION OWNERSHIP, INC.

14 IT IS ORDERED that ECF No. 13 is  
15 GRANTED only to the extent that it  
16 seeks to have the ENE vacated.  
17 (Whether or not discovery will be  
18 stayed will be decided by Judge  
19 Koppe.) While Plaintiff filed a motion to  
20 dismiss ECF No. 13 (see ECF No. 20),  
21 she did not argue that the ENE should  
take place. Accordingly, ECF No. 13  
will be granted to the extent it requests  
that the ENE be vacated under LR  
7-2(d).

**IT IS SO ORDERED**

**DATED: April 08, 2020**

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**BRENDA WEKSLER**  
**UNITED STATES MAGISTRATE JUDGE**

24 IT IS FURTHER ORDERED that ECF  
25 No. 20 is DENIED under LR 7-2(d).  
26 Again, Plaintiff does not provide points  
27 and authorities regarding why the ENE  
28 should be held or ECF No. 13 should  
be dismissed.

1 **PROOF OF SERVICE**

2 I am a resident of the State of Nevada, over the age of eighteen years, and not a party  
3 to the within action. My business address is 3960 Howard Hughes Parkway, Suite 300, Las Vegas,  
4 Nevada 89169-5937. On March 23, 2020, I served the within document(s):

5 **DEFENDANT'S MOTION TO STAY DISCOVERY AND**  
6 **VACATE THE EARLY NEUTRAL EVALUATION**

7 ☒ by serving the following parties electronically through CM/ECF

8 ☒ by email: [tanyaspurbeck@gmail.com](mailto:tanyaspurbeck@gmail.com)

9 **Please note due to COVID-19, our offices are working remotely. As such hard**  
10 **copy will not be mailed. Please contact me immediately if alternative service**  
11 **needs to be arranged. Thank you.**

12 ☐ by facsimile transmission at or about \_\_\_\_\_ on that date. The  
13 transmission was reported as complete and without error. A copy of the transmission  
14 report, properly issued by the transmitting machine, is attached. The names and  
15 facsimile numbers of the person(s) served are as set forth below.

16 ☐ by depositing a true copy of the same enclosed in a sealed envelope, with delivery  
17 fees provided for, in an overnight delivery service pick up box or office designated  
18 for overnight delivery, and addressed as set forth below.

19 ☐ by personally delivering a copy of the document(s) listed above to the person(s) at  
20 the address(es) set forth below.

21 Tanya Spurbeck  
22 5970 Belcastro Street  
23 Las Vegas, NV 89113

24 I am readily familiar with the firm's practice of collection and processing  
25 correspondence for mailing and for shipping via overnight delivery service. Under that practice it  
26 would be deposited with the U.S. Postal Service or if an overnight delivery service shipment, deposited  
27 in an overnight delivery service pick-up box or office on the same day with postage or fees thereon  
28 fully prepaid in the ordinary course of business. I declare under penalty of perjury that the foregoing  
is true and correct. Executed on March 23, 2020, at Las Vegas, Nevada.

/s/ Maribel Rodriguez

Maribel Rodriguez